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Part IV.--- Items of General Interest

## **Election of Alternative Minimum Funding Standards for Community Newspaper Plans**

Notice 2020-XX

### **I. Purpose**

This notice provides guidance regarding the election of alternative minimum funding standards for certain defined benefit pension plans under § 430(m) of the Internal Revenue Code (Code), which was added by section 115 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94. In addition to summarizing the relevant provisions of § 430(m), this notice:

- Specifies the applicable United States Treasury obligation yield curve that is used to determine the present value of certain increases in benefits
- Sets forth rules and procedures relating to the election under § 430(m), including a limited period of time for plan sponsors to make the election for prior years
- Provides relief related to the impact of the election on the application of § 436
- Provides extensions of time for certain funding balance elections under § 430
- Provides guidance on the reporting requirements that reflect the effect of the election

### **II. Background**

Section 115(a) of the SECURE Act added new § 430(m) to the Code to permit the plan sponsor of a community newspaper plan under which no participant has had an increase in accrued benefit after December 31, 2017 to elect to have alternative minimum funding standards apply to the plan in lieu of the minimum funding requirements that would otherwise apply under § 430.<sup>1</sup> Pursuant to § 430(m)(2), any election under § 430(m) will be made at such time and in such manner as prescribed by

<sup>1</sup> Section 115(b) of the SECURE Act added a new § 303(m) to the Employee Retirement Income Security Act of 1974 (Pub. L. No. 93-406 (88 Stat. 829)), as amended (ERISA). Section 303(m) of ERISA provides rules that are parallel to the rules of § 430(m) of the Code, except for a minor difference in the definition of a community newspaper plan. Under § 303(m)(4)(A)(i) of ERISA, the employer may either publish and distribute a community newspaper or publish and distribute one or more community newspapers in the same state. Under § 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and § 3002(c) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in this notice for purposes of ERISA, as well as the Code. Thus, the provisions of this notice relating to § 430 also apply for purposes of § 303 of ERISA, and the provisions of this notice relating to § 436 of the Code also apply for purposes of § 206(g) of ERISA.

the Secretary, and once an election is made with respect to a plan year, it will apply to all subsequent plan years unless revoked with the consent of the Secretary.

The term 'community newspaper plan' means a plan maintained by an employer that publishes and distributes a daily newspaper that primarily serves a metropolitan area with a population of at least 100,000 in a single state, but only if the employer satisfies the ownership and control requirements of § 430(m)(4)(A)(ii) through (iv). If the plan sponsor makes the election under § 430(m) for its community newspaper plan, the election also applies to all other defined benefit plans sponsored by any member of the same controlled group. Section 430(m)(5) defines the controlled group for purposes of § 430(m) as all persons treated as a single employer under § 414(b), (c), (m), or (o) as of December 20, 2019 (the date of enactment of the SECURE Act).

If the § 430(m) alternative minimum funding standards apply to a plan, the interest rates in § 430(m)(3)(A) (rather than the interest rates in § 430(h)(2)) are used, the rules of § 430(i) do not apply, and any shortfall amortization base is amortized over a 30-year period. For the first plan year for which the alternative minimum funding standards apply, all shortfall amortization bases for prior plan years (and associated amortization installments) are eliminated, and a new shortfall amortization base is determined using an interest rate of 8 percent to calculate the funding target (and, if applicable under § 430(g)(3)(B), the value of plan assets). The new shortfall amortization base is amortized over a 30-year period also using an 8 percent interest rate.<sup>2</sup>

Pursuant to § 430(m)(3)(A)(ii), in the case of a plan sponsored by a member of the controlled group that has an increase in accrued benefits (or any increase in other benefits under the plan) in a plan year with respect to which the election is in effect, the present value of that increase, determined using the United States Treasury obligation yield curve for the valuation date for the plan year must be included in the funding target and target normal cost (as applicable). Thus, for example, if a sponsor of the community newspaper plan makes an election under § 430(m) that applies beginning with the calendar year 2018 plan year, and a member of the plan sponsor's controlled group maintains a defined benefit plan with a calendar year plan year that provides ongoing benefit accruals, then for the January 1, 2020 valuation, the portion of the funding target that is attributable to the benefit accruals from 2018 and 2019 (and the expected accruals for 2020 included in target normal cost) must be determined using the United States Treasury obligation yield curve.

For later plan years for which the election applies, any new shortfall amortization base that is established will be amortized using a 30-year period and an 8 percent interest rate.

### **III. Applicable United States Treasury obligation yield curve**

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<sup>2</sup> The effect of the election is prospective only and does not have any impact on the prefunding balance, funding standard carryover balance or prior unpaid minimum required contributions.

The United States Treasury obligation yield curves that are to be used under § 430(m)(3)(A)(ii) are set out at <https://home.treasury.gov/data/treasury-coupon-issues-and-corporate-bond-yield-curves/treasury-coupon-issues>. That webpage provides links to a number of yield curves for each month, and which yield curve applies to a plan pursuant to § 430(m)(3)(A)(iii) depends on whether the valuation date for the plan year is the first day of a month, the last day of a month, or another day within a month.

If the plan's valuation date is the first day of a month, the applicable yield curve is the daily yield curve for the last business day of the prior month. That curve can be found on the above website by selecting the "TNC Treasury Yield Curve Spot Rates, End of Month" link for the applicable year and finding the curve for the applicable month on the spreadsheet.

If the plan's valuation date is the last day of a month, the applicable yield curve is the daily yield curve for the last business day of the month. That curve can be found on the above website by selecting the "TNC Treasury Yield Curve Spot Rates, End of Month" link for the applicable year and finding the curve for the applicable month on the spreadsheet.

If the plan's valuation date is neither the first day of a month nor the last day of a month, the applicable yield curve is the monthly average of the daily yield curves for that month. That monthly average yield curve can be found on the above website by selecting the "TNC Treasury Yield Curve Spot Rates, Monthly Average" link for the applicable year and finding the curve for that applicable month on the spreadsheet.

#### **IV. Rules relating to the making and duration of an election under § 430(m)**

##### **A. Manner of election**

An election to apply § 430(m) by the plan sponsor must be provided in writing to the community newspaper plan sponsor's actuary, plan administrator, and controlled group members. The election must identify the first plan year for which the election applies and must include a certification of eligibility for the election, and a list of members of the plan sponsor's controlled group. The Appendix to this Notice contains a model that can be used for this purpose.

##### **B. Time of election**

For the first plan year for which the election under § 430(m) applies to a plan, different actuarial assumptions for the plan will be used than were used for prior plan years. Under § 1.430(d)-1(f)(1)(iii), the actuarial assumptions that apply for the plan for a plan year are established by filing Schedule SB of Form 5500 for the plan year that reflects those assumptions, and § 1.430(d)-1(f)(1)(ii) provides that the actuarial assumptions established for a plan year generally may not be changed after those assumptions have been established. These rules generally would preclude the making of an election under § 430(m) for a plan year after a Schedule SB has been filed for the plan year.

However, section VI of this notice provides a limited period of time under which plan sponsors may make elections under § 430(m) for a plan year after the actuarial assumptions have been established for the plan year.

### **C. Duration of election for community newspaper plan**

Unless the plan sponsor of a community newspaper plan revokes an election to have § 430(m) apply to the plan (which would require the consent of the IRS), this election continues to apply to the plan, provided that no participant in the plan has an increase in accrued benefit after December 31, 2017 (whether on account of current service or an amendment increasing accrued benefits for past service). If there is such an increase in accrued benefit in a plan year, the election will not apply for any subsequent plan year.<sup>3</sup>

A plan sponsor of a community newspaper plan may request permission to revoke an election under § 430(m) using the procedures set forth in Rev. Proc. 2020-4, 2020-1 I.R.B. 148, or its successors.

### **D. Duration of application of election to controlled group member**

An election to use the alternative minimum funding standards under § 430(m) for a plan year made by a plan sponsor of a community newspaper plan applies to any other defined benefit plan sponsored by a member of the plan sponsor's controlled group within the meaning of § 430(m)(5) (that is, all persons treated as a single employer with the plan sponsor under § 414(b), (c), (m), or (o) as of December 20, 2019) for a plan year provided that (1) the plan year of that other defined benefit plan begins during a plan year of the community newspaper plan for which the election applies to the community newspaper plan and (2) the plan sponsor of that other defined benefit plan is a member of the controlled group on the first day of that plan's plan year.

### **V. Deemed immaterial treatment for change in AFTAP**

If an election under § 430(m) is made for a plan year after a plan's adjusted funding target attainment percentage (AFTAP) under § 436 has been certified for the plan year, the election will have an impact on that certified AFTAP. Section 1.436-1(h)(4)(iii) sets forth rules relating to changes in certified AFTAPs, and the effect of such a change in certified AFTAP depends on whether the change is material (within the meaning of § 1.436-1(h)(4)(iii)(B)) or immaterial (within the meaning of § 1.436-1(h)(4)(iii)(C)). Under § 1.436-1(h)(4)(iv)(A), a material change in a plan's AFTAP will cause a plan to fail to comply with § 401(a).

Section 1.436-1(h)(4)(iii)(C) provides a special rule that, subject to certain conditions, deems a change in a plan's AFTAP to be immaterial (even if the change would

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<sup>3</sup> However, if an election under § 430(m) by the plan sponsor of a community newspaper plan ceases to apply by reason of an increase in accrued benefit under the plan after December 31, 2017, a new election under § 430(m) may be available if the plan sponsor or member of the controlled group sponsors another community newspaper plan that satisfies the conditions of eligibility for which an election under § 430(m) (1) may be made.

otherwise be material) if the change results from an event specified in § 1.436-1(h)(4)(iii)(C)(1) through (8). Deemed immaterial treatment under § 1.436-1(h)(4)(iii)(C) with respect to an event that results in a change in AFTAP is conditioned on the AFTAP being recertified as soon as reasonably practicable after the event. The effect of this deemed immaterial treatment is that a plan administrator can reflect the change in AFTAP on a prospective basis beginning with the date of the event (including for purposes of determining the presumed AFTAP for the following year).

Section 1.436-1(h)(4)(iii)(C)(9) provides authority for guidance to be published in the Internal Revenue Bulletin specifying additional events for which a resulting change in AFTAP may be deemed immaterial. Pursuant to that authority, this notice designates an election under § 430(m) as an event for which a resulting change in AFTAP may be deemed to be immaterial. Accordingly, a change in AFTAP attributable to such an election is deemed to be an immaterial change in the plan's AFTAP, provided that the plan's enrolled actuary recertifies the AFTAP as soon as reasonably practicable after the event in accordance with § 1.436-1(h)(4)(v)(D).

## **VI. Extensions of time to facilitate retroactive elections**

### **A. Permission to change assumptions for prior plan year**

Under § 115(c) of the SECURE Act, § 430(m) applies to plan years ending after December 31, 2017. In light of this retroactive effective date, this section VI provides an exception to the general timing rules to permit a change of the interest rate assumption that applies to a plan pursuant to an election under § 430(m) to be made for a plan year after the actuarial assumptions for that plan year have been established under § 1.430(d)-1(f)(1)(iii). Under this exception, an election under § 430(m)(3) may be made for a plan year ending after December 31, 2017 after the actuarial assumptions for that plan year have been established (referred to as a retroactive election), provided that (i) the election is made on or before December 31, 2020, and (ii) for each affected plan year, an amended Schedule SB reflecting the retroactive election is filed no later than the next Schedule SB that is filed after making the election.

In order to fully reflect the impact of the reduced minimum funding requirement resulting from a retroactive election under § 430(m), section VI(B) provides extensions of time with respect to certain elections for a plan year. These extensions are in addition to the deemed immaterial treatment described in section V of this notice for such a plan year.

### **B. Extension of time for funding balance elections**

Section 1.430(f)-1 provides rules regarding a plan's prefunding balance and funding standard carryover balance, which may be used to offset all or a portion of the minimum required contribution for the plan. Under § 1.430(f)-1(b)(1)(ii), a plan sponsor may elect each year to increase the plan's prefunding balance by an amount not in excess of the present value of the excess contributions for the preceding plan year. Under § 1.430(f)-1(f)(2)(i), this election must be made no later than the due date for the minimum

required contribution for that preceding plan year (or a later date prescribed in published guidance). Pursuant to this notice, a plan sponsor may make an election to add to a plan's prefunding balance for any plan year for which a retroactive § 430(m) election has been made up through December 31, 2020.

Section 1.430(f)-1(d) provides rules regarding a plan sponsor's election to use the plan's prefunding balance or funding standard carryover balance to offset all or a portion of the minimum required contribution for a plan year. Under § 1.430(f)-1(f)(2)(i), this election must be made no later than the due date for the minimum required contribution for that plan year (or a later date prescribed in published guidance). Under § 1.430(f)-1(f)(3), a plan sponsor's election to use a plan's prefunding balance or funding standard carryover balance, is irrevocable except as provided in § 1.430(f)-1(f)(3), or in published guidance. Pursuant to this notice, a plan sponsor may revoke an election to use a plan's prefunding balance or funding standard carryover balance (or reduce the portion of that balance to which an election applied) for any plan year for which a retroactive § 430(m) election has been made up through December 31, 2020.

## **VII. Instructions for completing the Schedule SB to reflect the election**

For a plan year for which an election under § 430(m) applies, Schedule SB of Form 5500 must be completed based on the following instructions:

Line 3 - If the funding target calculation includes some benefits for which the present value is calculated using the 8 percent segment interest rate and other benefits for which present value is calculated using the applicable United States Treasury obligation yield curve, provide an attachment showing the portions of the funding target determined using the 8 percent interest rate and the portion determined using the applicable United States Treasury obligation yield curve.

Line 5 - The effective interest rate must reflect both the 8 percent interest rate for the new shortfall amortization base and the United States Treasury obligation yield curve, if applicable.

Line 21a - Enter 8 percent for the three segment rates and do not check the full yield curve box, even if some or all of the funding target or the target normal cost is calculated using the applicable United States Treasury obligation yield curve.

Line 21b - Enter '0'.

## **Paperwork Reduction Act**

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number XXXX-XXXX.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in the Appendix of this notice. The collections of information are required to implement the application of the alternative minimum funding standards under § 430(m). The collections of information are mandatory for those plan sponsors making an election under § 430(m) to a plan.

The likely respondents are sponsors of approximately 20 community newspaper plans.

Any potential changes on burden will be reported through the renewal of the current OMB approval numbers.

Estimates of the annualized cost to respondents are not available at this time.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

### **Drafting information**

The principal author of this notice is Tom Morgan of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan or Linda Marshall at 202-317-6700 (not a toll-free call).

## Appendix

### I. Content of election

As an officer of the employer sponsoring a community newspaper plan, I hereby elect to apply the alternative minimum funding standards under § 430(m)(3), beginning with the plan year beginning \_\_\_\_\_. I also certify that the plan sponsor is eligible to make the election and provide the following information:

Information about the employer:

- Name of employer
- EIN of employer
- Name of community newspaper
- Community in which the newspaper is primarily distributed
- State or states in which that metropolitan area is located
- Certification that the employer is not publicly traded, and is not controlled, directly or indirectly, by a publicly traded company
- The company is controlled directly or indirectly (indicate all that apply):
  - o (1) By 1 or more persons residing primarily in the state in which the community newspaper is published
  - o (2) For not less than 30 years by individuals who are members of the same family
  - o (3) By a trust created or organized in the state in which the community newspaper is published, the sole trustees of which are persons described in (1) or (2)
  - o (4) By an entity which is described in § 501(c)(3) and exempt from taxation under § 501(a), which is organized and operated in the state in which the community newspaper is published, and the primary purpose of which is to benefit communities in such state
  - o (5) By a combination of persons described in (1), (3), or (4)
- Certification that the employer does not control, directly or indirectly, any newspaper in any other state

Information about the community newspaper plan:

- Name of plan for which election is made
- Plan number
- Date as of which benefit accruals ceased

A list of other members of the controlled group, as defined in § 430(m)(5):

Signature of employer \_\_\_\_\_ Date \_\_\_\_\_

The election must be signed by an officer of the employer sponsoring the plan. An authorized representative of the employer, a plan administrator, or an enrolled actuary may not sign this election on behalf of the employer.